

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.2754 OF 2003
AND CRIMINAL ORIGINAL PETITION NO.2755 OF 2003
AND
CRL.M.P.Nos.969 & 970 OF 2003.

1.M.Antony
2.M.Mariya Arputham
3.M.Mariya Selvi
4.G.Edwin Raja ... Petitioners in both Ops.

-Vs-

The State of Tamil Nadu,
rep.by The Inspector of Police,
Economic Offences Wing-2,
Nagercoil,
Kanyakumari District. ... Respondent in both OPs.

Criminal Original Petitions filed under Section 482 of the Code of
Criminal Procedure for the reliefs stated therein.

For petitioners : Mr.N.Rajan

For respondent : Mr.O.Srinath,
Govt.Advocate (Crl.side)

:COMMON ORDER

Both the above criminal original petitions have been filed by
the accused No.2 to 5 in the cases in Cr.Nos.7 and 8/2002, both registered by
one and the same respondent, the Economic Offences Wing-2, Nagercoil,
Kanyakumari District seeking to call for the records in the said crime numbers
and quash the same as against the petitioners on common grounds such as that
the petitioners are members of the same family arrayed as accused No.2 to 5 in
each case; that in both the said cases, the first accused is one M.Elwin
Jesudas who is also the member of the same family and these petitioners would
submit that the first accused has been running the business in banking from
the year 1989 onwards having obtained the licence under the Tamil Nadu Pawn
Brokers Act, 1943 thus doing the business under the name and style of `Elwin
Bankers' at Door No.12-73E, Asaripallam Junction, Nagercoil, Kanyakumari
District.

2. The petitioners would further submit that due to some difficulties, the first accused was not able to return the amounts to the depositors and the depositors started complaining not only against the said Elwin Yesudas but also against the petitioners for cheating, based on which the first of the above cases in Cr.No.7/2002 has been registered for the offences punishable under Sections 409, 420 and 120-B IPC and the case in Cr.No.8/2002 has been registered for the offence punishable under Section 5 of the Tamilnadu Protection of Interest of Depositors (In financial establishments) Act, 1997; that the petitioners are in no way connected to the said business of the first accused and without application of mind they have been falsely implicated by the respondent as accused in the above cases taking advantage of their relationship with the first accused.

3. Giving the details of the investments made by the complainants in both the above cases, the petitioners would further submit that the accounts have been opened in the first accused bank in their respective names after payment of the money to the first accused and the receipts acknowledging their payments have been issued only by the first accused and in these transactions, the petitioners have no role at all except for bald allegation that they have canvassed for their investment.

4. The petitioners would further submit that there is no entrustment of money in their hands or any pecuniary advantage obtained by them nor did they receive any deposit nor did they do any business or have any connection with the business carried on by the first accused and on such allegations, the petitioners would come forward to file both the above criminal original petitions seeking to quash the FIRs. registered in Cr.Nos.7 and 8/2002 as mentioned supra.

5. During arguments, the learned counsel appearing on behalf of the petitioners, offering the crime numbers and provisions of law under which the cases have been registered, would only reiterate those points which have already been brought forth in the petitions without adding anything new. The learned counsel for the petitioners would also cite a judgment of the Honourable Apex Court delivered in KATTA SUJATHA vs. FERTILIZERS & CHEMICALS TRAVANCORE LTD. AND ANOTHER reported in 2003(1) CTC 127 wherein the Honourable Apex Court discussing the facts and circumstances involved in the said case, found that the appellant therein was not involved in any of the transactions referred to in the complaint and it was also not stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of Section 141 of the Negotiable Instruments Act nor had there been any allegation made against the appellant that she had connived with any other partner in the matter of issue of cheque and therefore remarking that in these circumstances, the High Court ought to have examined the matter from this angle and further citing the earlier judgment of the Honourable Apex Court in STATE OF KARNATAKA vs. PRATAP CHAND reported in 1981 (2) SCC 335, wherein the Honourable Apex Court has explained the meaning of the terms 'person in charge' as that the person should be in overall control of the day-to-day business of the company or firm, would ultimately allow the appeal setting aside the order of the High Court.

6. On the other hand, the learned Government Advocate on the criminal side would submit that these cases are pertaining to the financial institutions which have cheated the public money; that specific allegations have been set in the complaints for the roles played by these petitioners also; that the complaints squarely accuses all the accused and therefore the complaints cannot be quashed. The learned Government Advocate would further submit that the properties are yet to be identified and recovered from those who are in possession of the same and it is only now in the threshold of investigation by the respondent and since being economic offences, many details have to be gone into prior to filing the final report and therefore this is not the time for this Court to go into the merits of the case and decide. On such arguments, the learned Government Advocate would pray to dismiss both the above criminal original petitions.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that so far as the first case registered in Cr.No.7/2002 is concerned, it has been registered for the offences punishable under Sections 409, 420 and 120-B IPC in which the occurrence is alleged to have taken place on 1.4.1995 and the complaint has been lodged on 24.10.2002 and so far as the second case registered in Cr.No.8/2002 for the offence punishable under Section 5 of the TNPID Act is concerned, the occurrence is said to have taken place on 24.2.1998.

8. In the first FIR in Cr.No.7/2002, specific allegations have been made against the first accused for having received the amounts and issued the passbook and also the other accused No.2 to 5 to have canvassed their investment in the bank run by the first accused.

9. So far as the second case registered in Cr.No.8/2002 is concerned, the second accused is alleged to have received the amount and issued the receipts and general allegations are made against all the accused for having received the amounts and promised them to return the same in the manner proposed by them and therefore it is very difficult at this stage of investigation to classify as to what are the specific roles played by each and every accused particularly that of the petitioners and only on filing of the charge-sheet by the respondent, such specifications would come to be known and since it is the paramount duty of the respondent to find out the actual roles played by each and every accused and if no role has been played by anyone or some of these accused, it is upto the respondent Police to delete their names in the charge-sheet and register the case against only those who are really indulged in the offences contemplated therein. Therefore, at this stage, when the matter is under the threshold of investigation by the respondent, it is not only unsafe but also dangerous to say anything which is susceptible to affect the investigation and hence in these circumstances, the only conclusion that could be arrived at is that it is premature on the part of this Court to decide anything for or against and the petitioners shall wait till the investigation is over and under such circumstances, both the above criminal original petitions deserve only to be dismissed.

In result, both the above criminal original petitions are dismissed.

Consequently, Crl.M.P.Nos.969 and 970 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao

To

1.The Inspector of Police,
Economic Offences Wing-2,
Nagercoil,
Kanyakumari District.

2.The Presiding Officer,
Special Court for TNPID Act Cases,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

CRIMINAL ORIGINAL PETITIONS NO.2754 & 2755 OF 2003

V. KANAGARAJ, J.

Today, when the above orders were pronounced in the presence of the learned counsel for both, learned counsel appearing on behalf of the petitioners has a request to be made that at least the trial could be expedited, further dispensing with the personal attendance of the petitioners before the trial court, particularly in view of the fact that petitioners 2 and 3 are ladies and the other petitioners also being engaged in their business activities, which would come to a standstill in case they have to appear on all hearings. Considering these facts and circumstances, this Court is of the view that the request of the learned counsel could be considered favourably in the following manner.

The trial court concerned is directed to expedite the trial procedures and see that the entire trial is over and the judgment is delivered, on merits and in accordance with law, within six months from the date of receipt of a copy of this order.

V. KANAGARAJ, J.

It is further ordered that the petitioners' personal attendance before the trial court on all future hearings is dispensed with excepting on those days when their personal attendance is indispensable in which event the trial court will be at liberty to require their personal attendance summoning them as provided for under Section 205 of the Criminal Procedure Code.

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19.03.2003

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